



June 7, 2019

sent via email: cotb@arb.ca.gov; ctr-report@arb.ca.gov

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, California 95814

Re: WSPA Comments on Formal AB 617 Proposed Modifications to CTR Regulation

Dear Sir or Madam,

The Western States Petroleum Association (WSPA) appreciates this opportunity to provide comments to the California Air Resources Board (CARB) on its formal proposed modifications to the AB 617 Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants (CTR) adopted on December 14, 2018. Previous written comments related to this rulemaking effort were submitted by WSPA on June 29, 2018, August 23, 2018, December 10, 2018, and March 29, 2019.

WSPA agrees that the CTR regulation is critical to the success and implementation of AB 617. We appreciate CARB's diligence over the past two years to address numerous stakeholder concerns and add elements of flexibility into the regulation in hope of establishing a program that works well in all air districts throughout the state. WSPA respectfully submits these written comments in response to the 25-day *Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information* dated May 13, 2019.

General Comments

- WSPA remains concerned that high costs and a shortage of stakeholder resources will inhibit the implementation and success of the CTR regulation. In particular, many air districts have publicly acknowledged a lack of funding and resources to implement the program. While WSPA understands that state legislation requires CARB to move ahead with this regulation, we recommend that specific safeguards be put in place to monitor and measure progress at both the state and local district levels.
- CARB has indicated, and WSPA agrees, that successful implementation of the CTR regulation will require a strong partnership between itself and the local air districts. We recommend that CARB take measures to modify the regulation, reporting dates, and/or any supporting guidelines in a timely fashion if warranted at any point during the roll-out period (e.g., if local air districts or CARB experience further delays).
- WSPA recommends that CARB publish frequent status reports and host regular work group meetings during the roll-out period to keep facilities informed of progress being made at both the state and local air district levels (e.g., quality and timing of emissions data received, changes to air district emission reporting programs). WSPA member companies operate many facilities subject to the CTR regulation, across multiple air

districts. For this reason, we recommend that CARB administer some frequency of communication at the state level to affirm that implementation remains both uniform and equitable, particularly during the roll-out period. Communication should not filter solely through the local air districts.

- WSPA requests that CARB communicate early and often with stakeholders regarding progress to develop and test its online reporting portal, presumably intended for use by both the air districts and facilities. WSPA expects its member companies to have valuable input on aspects such as tool interface and mechanisms for reporting data.

Specific Comments

- **§ 93401(a)(4).** With regard to the expanded applicability criteria in § 93401(a)(4), WSPA agrees with the proposed phase-in approach to reporting. But we remain concerned that it does not go far enough to offset added costs and resource demands associated with replacing the previous selected community approach.
- **§ 93401(a)(5).** Rationale for adding applicability § 93401(a)(5) was unclear in CARB's *Description and Rationale for Regulation Updates* document. Facilities that do not meet applicability criteria in subsections (a)(1)-(a)(4) should have no reporting obligations. Given the ambiguity of this new subsection relative to CARB's intent on *establishing uniformity and equity in reporting*, WSPA recommends that it be removed. If CARB's only purpose with § 93401(a)(5) is to establish an online mechanism for local air districts to transmit and store emissions data for other facilities not subject to the CTR regulation (i.e., a replacement to CEIDARS), then WSPA recommends that CARB move this language out of the applicability criteria section and into a new, stand-alone section near the end of the regulation stating that *CARB and local air districts may use the online reporting portal as a means for transmitting and storing emissions data for facilities not subject to the CTR regulation.*
- **§ 93401(d).** Insertion of the word "permitted" adds clarity throughout the regulation. But WSPA is concerned that uncertainty stills remain as to how individual air districts will evaluate applicability relative to words referenced elsewhere such as "unpermitted" and "maximum emissions" (e.g., unpermitted fugitive emissions). WSPA recommends that § 93401(d) be renamed from Demonstration of Nonapplicability to Demonstration of Applicability and Nonapplicability, and add language that allows a facility the option to request from the local air district background on its applicability determination. In other words, WSPA recommends that § 93401(d) be modified to allow demonstrations to be requested by both parties, when either nonapplicability or applicability is in question.
- **§ 93402.** The updated definition of "Best available data and methods" establishes that *best available data and methods should not necessarily be maximum emissions values, potential to emit, or prescriptive limits established by permitting or regulation, unless those values provide the most accurate estimates available.* WSPA recommends that the regulation allow a facility to request and be given consideration from its local air district, use of a proposed alternative approach to estimating emissions when there is disagreement about the words "most accurate" in this definition.

- **§ 93403(a)(1).** WSPA agrees with the delay of reporting until 2020 (2019 data year), and appreciates CARB's reference in supporting documentation to certain facilities performing *"business as usual" air district reporting for specified data years to allow for a transitional period before full reporting is required.* This will presumably also allow more time to resolve problems without jeopardizing compliance.
- **§ 93403(c)(1).** Per the modified regulation, it appears that only Agricultural Operations automatically qualify for abbreviated reporting. Any other facility (or source category) subject to § 93401(a)(4) and seeking the same privilege must first communicate with its local air district. Per § 93403(c)(5), to qualify for abbreviated reporting, *the local air district may submit a written request to the CARB Executive Officer to include additional process applicability categories for abbreviated reporting, on behalf of facilities within the district.* Given the extremely large number and similarity of service stations operating throughout the state, WSPA recommends that "Retail sale of gasoline" be added to § 93403(c)(1) alongside Agricultural Operations. This source category is ideally suited for abbreviated reporting and CARB has acknowledged its potential suitability for creating functionality to report as such in its online reporting portal.
- **§ 93403(d)(2)(A).** With regard to reporting of emissions data by a facility to CARB if its local air district fails to submit an annual emissions report by August 1, the modified regulation allows the facility only 30 days to do so after receiving notification from CARB. WSPA recommends that this requirement be changed from 30 to 90 days. If an air district anticipates difficulty meeting the August 1 deadline, it should know and communicate that concern well in advance to CARB, and no later than the May 1 district reporting deadline imposed on facilities. That would enable CARB, in turn, to quickly notify any impacted facility in the air district. This would essentially transfer to the facility the same 90 day window of time otherwise granted to the air district to report emissions data (i.e., the period of time between May 1 and August 1).
- **§ 93404(b)(2)(C).** WSPA member companies rely on many different contractors and subcontractors to lead maintenance and turnaround activities, and often have no means to track usage, activity, or emissions data for their portable engines and devices. Creating a related recordkeeping process or system would be time consuming and costly for most facilities. Applying the three-month operating criteria to contractor-owned PERP registered engines located at a facility would be challenging as well. WSPA recommends that CARB incorporate into § 93404(b)(2)(C) language similar to § 93404(b)(2)(B), wherein it is stated that emissions must be reported *if at the beginning of the data year, the emissions are required to be reported to the local air district or if the emissions are quantified by the local air district.* Alternatively, for facilities that believe accountability for reporting emissions belongs with the owner or operator of portable engines and devices, WSPA recommends that § 93404(b)(2)(C) be modified to incorporate contractor and subcontractor recordkeeping and/or reporting obligations.
- **Appendix A, Table A-3.** WSPA recommends that source category "Retail sale of gasoline" be re-categorized from Sector Phase 2 to Sector Phase 3. This will provide an extra year for owners and operators to prepare to meet the new reporting requirements. There are approximately 10,000 gasoline service stations in California, so outreach and

- education for this source category will be substantial. Also, both CARB and the local air districts would benefit from having an extra year to prepare for this very large number of facilities to begin reporting.

WSPA appreciates this opportunity to provide comments on the formal proposed modifications to the CTR regulation. We welcome the opportunity to talk with you more about these comments. Please feel free to reach me at troberts@wspa.org.

Sincerely,

A handwritten signature in blue ink that reads "Tiffany Roberts". The signature is fluid and cursive, with a large initial 'T' and 'R'.

Tiffany Roberts
Director, Legislative and Regulatory Policy
Western States Petroleum Association

cc: Mr. John Swanson, Manager
Dr. David Edwards, Branch Chief